

VERNER · LIIPFERT
BERNHARD · McPHERSON & HAND
CHARTERED

901 - 15TH STREET, N.W.
WASHINGTON, D.C. 20005-2301
(202) 371-6000
FAX: (202) 371-6279

DOCKET FILE COPY ORIGINAL

RECEIVED

DEC 19 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

WRITER'S DIRECT DIAL
(202) 371-6060

December 19, 1996

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: WT Docket No. 96-86 -- The Development of Operational Technical
Spectrum Requirements for Meeting Federal, State and Local Public
Safety Requirements Through the Year 2010

Dear Mr. Caton:

Transmitted herewith, on behalf of the Association of American Railroads, are
an original and four copies of its Reply Comments in the above-referenced docket.

If you have any questions concerning this matter, please call the undersigned.

Sincerely,



Thomas J. Keller

Enclosures

No. of Copies rec'd
List ABCDE

024

FEDERAL COMMUNICATIONS
COMMISSION

ORIGINAL

MISSION

RECEIVED

DEC 19 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

The Development of Operational Technical)
Spectrum Requirements for Meeting Federal,)
State and Local Public Safety Requirements)
Through the Year 2010)

WT Docket No. 96-86

REPLY COMMENTS OF THE ASSOCIATION OF AMERICAN RAILROADS

The Association of American Railroads ("AAR"), by its undersigned counsel and pursuant to Section 1.415 of the Rules of the Federal Communications Commission, 47 C.F.R. § 1.415, respectfully submits these Reply Comments in response to the Notice of Proposed Rule Making ("Notice") in the above-referenced proceeding¹ and the comments of other parties in response thereto.

I. BACKGROUND AND PRELIMINARY STATEMENT

In Comments filed on October 21, 1996, AAR focused primarily on certain sections of the Public Safety Wireless Advisory Committee ("PSWAC") Final Report² on public safety wireless communications which were addressed by the Notice. AAR first described the need of the railroad industry for wireless communications capability to meet safety requirements in the operation of the nation's freight and passenger rail transportation

¹ Notice of Proposed Rule Making, FCC 96-155 (April 10, 1996) ("Notice").

² Final Report of the Public Safety Wireless Committee to the Federal Communications Commission, Reed E. Hundt, Chairman and the National Telecommunications and Information Agency, Larry Irving, Assistant Secretary of Commerce for Communications and Information, September 11, 1996 ("Final Report" or "PSWAC Final Report").

system. AAR expressed its opposition to several of the suggestions contained in the PSWAC Final Report. In particular, AAR opposed the suggestion that channels created as a result of refarming be allocated automatically to police, fire and emergency response organizations. AAR also opposed the suggestion of the Spectrum Requirements Subcommittee Final Report that there exist viable alternatives for certain private wireless users to employ commercial wireless systems to accommodate their growth. Finally, AAR opposed the recommendation of the PSWAC Final Report to create three service pools with sharing authorized only from higher ranked to lower ranked services in the event that the existing service pools are consolidated.

These Reply Comments address those sections of the PSWAC Final Report addressed in AAR's Comments and which were addressed by other commenters in this proceeding. In addition, these Reply Comments address issues raised in a related proceeding initiated by the Commission's Notice of Proposed Rule Making³ concerning the establishment of the Wireless Communications Service ("WCS").

II. THE COMMISSION'S RULES MUST RECOGNIZE THE USE OF WIRELESS COMMUNICATIONS FOR CRITICAL SAFETY PURPOSES BY BOTH PUBLIC AND PRIVATE ENTITIES

Several commenters argued that the definition of public safety should include a level of governmental involvement in the provision of the service.⁴ AAR agrees with those

³ Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS"), GN Docket No. 96-228, Notice of Proposed Rule Making (Rel. November 12, 1996) ("WCS Notice").

⁴ Comments of the Association of Public-Safety Communications Officials International, Inc. ("APCO") at 6; Comments of the State of California, Department of General Services, Telecommunications Division at 6; Comments of the City of

commenters who opposed this definition of public safety because it elevates form over function.⁵ As noted in AAR's Comments, railroads use their private wireless communications systems for safety purposes on a daily basis. The critical nature of these communications dictates that railroads have clear access to sufficient spectrum to avoid potentially catastrophic accidents and to respond to any emergency. This need for access to radio frequencies has been underscored by the Department of Transportation ("DOT"),⁶ the Federal Railroad Administration,⁷ and the National Transportation Safety Board.⁸ The FCC has itself acknowledged that railroads require reliable radio communications for safety-related purposes, for example, "in either avoiding the occurrence of hazards or responding to emergency circumstances."⁹

Despite this demonstrated need for safety-related wireless communications by railroads and certain other private industrial users, however, the PSWAC Final Report subordinates these safety functions to governmental public safety users merely by virtue of the latter's status as government entities. As noted by the Industrial

Mesa, Arizona, Communications Division at 3-4.

⁵ Comments of Alarm Industry Communications Committee at 2; Comments of the American Automobile Association at 1; Comments of UTC at 4, 7.

⁶ Comments of U.S. Department of Transportation in WT Docket No. 96-86, filed October 21, 1996.

⁷ Letter from Federal Railroad Administration to FCC Chairman, December 12, 1995 (ex parte filing in PR Docket No. 92-235).

⁸ Letter from National Transportation Safety Board to FCC Chairman, December 13, 1995 (ex parte filing in PR Docket No. 92-235).

⁹ Notice, ¶ 25.

Telecommunications Association, this emphasis on the governmental status of wireless communications users in determining spectrum priorities can lead to incongruous results.¹⁰ In setting priorities for spectrum allocation, AAR urges the Commission to focus on the actual safety functions of communications users rather than on their governmental status.¹¹ AAR agrees with the comments of DOT that although "the definitions advanced by PSWAC and proposed for adoption by the FCC appear to go a long way 'to encompass the broadest array of the responsibilities and functions performed by [federal] public safety agencies' . . . these definitions do not appear to recognize those public and private entities that use wireless communications for both safety and other purposes."¹² AAR member railroads use their wireless communications systems for the safe operation of the nation's railroads, thereby ensuring the safety of the public. This critical public safety function must be recognized by the Commission as it makes future spectrum allocations. Undue emphasis on the governmental status of licensees could result in an insufficient allocation of spectrum to entities which use their wireless communications systems for public safety purposes.

¹⁰ Comments of Industrial Telecommunications Association, Inc. ("ITA") at 5.

¹¹ AAR notes that several of the "unique" operational characteristics of public safety providers described in the PSWAC Final Report are the very same factors required by the nations' railroads: dedicated capacity; extremely high reliability; ubiquitous coverage. PSWAC Final Report at 14.

¹² Comments of the United States Department of Transportation at 7-8.

III. NEW CHANNELS CREATED BY REFARMING SHOULD NOT BE ALLOCATED AUTOMATICALLY TO PUBLIC SAFETY USERS

Several Commenters gave broad support to the spectrum allocation recommendations made in the PSWAC Final Report,¹³ one of which was to reallocate the new channels created through refarming to police, fire and emergency response users. For the reasons described in AAR's Comments, this recommendation is unacceptable to the nation's railroads. Due to severe congestion on their own channels, railroads need more -- not fewer -- channels with which to operate their communications systems. Because of this critical need for additional frequencies, AAR reiterates its position that new channels created in the refarming proceeding as a result of splitting channels currently allocated to the Railroad Radio Service should be made available to the railroad industry rather than be reallocated to police, fire and emergency services.

Several other commenters opposed the automatic reallocation of the newly-created refarming channels. UTC, the Telecommunications Association ("UTC") strongly opposed this recommendation.¹⁴ The American Petroleum Institute ("API") also opposed the PSWAC recommendation, noting that many other users require expanded spectrum and that the reallocation of these channels to police, fire and emergency service users would be unrealistic due to the frequency coordination problems such reallocation would

¹³ Comments of the Northern California Chapter of the Association of Public/Safety Officials, Inc. ("NorCal APCO") at 17; Comments of the Federal Law Enforcement Wireless Users Group ("FLEWUG") at 18; Comments of the City of Mesa, Arizona, Communications Division at 16-17.

¹⁴ Comments of UTC at 8.

cause.¹⁵ API pointed out that for practical coordination and operational reasons, new channels created in the industrial radio service which are adjacent to existing channels in that service should remain available for use by industrial users.¹⁶ For these same reasons, any new channels situated adjacent to existing Railroad Radio Service channels should remain available only to railroads.

It is noteworthy that the International Association of Chiefs of Police ("IACP"), which represents governmental public safety agencies, also opposed the PSWAC spectrum allocation recommendation. IACP recognized the critical need for sufficient spectrum for transportation, utilities and other industrial users whose operations directly affect the safety of life and property.¹⁷ IACP correctly noted that private users such as railroads need to expand their use of spectrum for safety purposes, which will require that newly-created channels from their own "refarmed" spectrum allocations be made available to them, rather than be reallocated to other users.¹⁸ AAR agrees with IACP's conclusion that spectrum gained from the reallocation of these private services, including the Railroad Radio Service, "should not be considered a part of the solution for the Public Safety spectrum shortfall."¹⁹

¹⁵ Comments of API at 22.

¹⁶ Id.

¹⁷ Comments of the International Association of Chiefs of Police ("IACP") at 2.

¹⁸ Id.

¹⁹ Id.

IV. AN ALLOCATION OF SOME PORTION OF THE WIRELESS COMMUNICATIONS SERVICE TO PUBLIC SAFETY USERS WOULD EASE THE SPECTRUM SHORTAGE FOR ALL SAFETY USERS

In the WCS Notice, the Commission proposed to establish a new Wireless Communications Service in the 2305-2320 and 2345-2360 MHz bands (together, the "2.3 GHz Band"). The Commission sought comment on how the needs of public safety wireless users could best be addressed relative to its allocation of this spectrum.²⁰ In response, a broad range of commenters expressed support for the allocation of some portion of this spectrum for public safety uses.²¹ AAR urged the Commission to consider the needs of both governmental and private safety users in allocating this spectrum by ensuring that some portion of the spectrum is allocated on a coordinated basis to private users which have safety-related operational missions requiring communications support.²²

While the amount of spectrum which may be allocated for public safety use in the WCS proceeding will likely be far less than the additional amount of spectrum needed by public safety users as identified by the PSWAC, any additional spectrum allocation will help ease the spectrum shortage faced by both governmental and private public safety spectrum users. Because all safety users face a shortage of spectrum, the Commission should ensure that the needs of both private and public safety users are considered in any allocation of WCS spectrum to safety users.

²⁰ WCS Notice, ¶ 19.

²¹ See Reply Comments of AAR in GN Docket No. 96-228 at 4, filed December 16, 1996.

²² See Comments of AAR in GN Docket No. 96-228 at 7, Filed December 4, 1996.

V. COMMERCIAL SERVICES CANNOT BE RELIED UPON TO PROVIDE EFFECTIVE SAFETY COMMUNICATIONS SERVICES

A clear majority of commenters opposed proposals by the PSWAC Spectrum Requirements Subcommittee and by the Commission in the Notice²³ that entities which use wireless communications for safety purposes rely on commercial wireless services to fulfill their needs. While several commenters stated that commercial wireless services may be used for certain non-essential administrative functions,²⁴ the commenters emphasized that commercial systems could not be relied upon to replace the critical safety functions currently provided by private, internal communications systems.²⁵

As noted by AAR in its Comments, the railroad industry has unique coverage, reliability and interoperability needs which cannot be met by any existing commercial service provider. Furthermore, there has been no indication that a commercial service is close to being developed which would provide railroads with the service needed to maintain their critical safety functions.²⁶ A telling example of the inadequacy of commercial radio systems for safety-related private operational usage occurred recently

²³ Notice, ¶¶ 89-90.

²⁴ See e.g., Comments of the American Association of State Highway Transportation Officials at 6; Comments of the City of Mesa, Arizona at 7.

²⁵ See e.g. Comments of APCO at 22; Comments of the American Petroleum Institute at 18; Comments of Orange County, California at 19; Comments of New York City Transit Authority at 12-13.

²⁶ Indeed, comments filed by wireless service providers in this proceeding failed to demonstrate that commercial systems can provide the necessary reliability, coverage or nationwide interoperability needs demanded by the railroad industry.

at the Denver International Airport.²⁷ Due to excessive system loading, a commercial carrier was deemed to be providing "inadequate service" to American Airlines' ground support personnel. A senior airline official observed that the CMRS provider's service delays were "endangering the communications in the airlines industry," and noted that "[a] man on a thirty-five foot [high] man-lift in the middle of a snow storm trying to de-ice the tail of a 727 does not need to be told he has to wait 60 seconds to talk on his radio."²⁸ That example typifies the problems that will occur if private users are forced to rely on commercial providers for safety-critical applications.

VI. CONCLUSION

While AAR generally supports the PSWAC for its efforts in addressing the complex and difficult issue of spectrum requirements for public safety users, there are several portions of the PSWAC Final Report with which AAR disagrees and which the Commission should not consider in making future spectrum allocations. Specifically, AAR urges the Commission to recognize that private entities such as railroads use wireless communications systems for critical operational and safety functions, and that these services should receive a high priority as the Commission makes future spectrum allocation decisions. In addition, any new channels created from the existing Railroad Radio Service channels should be available only to railroads to meet their own expanding

²⁷ LAND MOBILE RADIO NEWS, December 6, 1996, p. 4.

²⁸ Id.

spectrum needs. Finally, AAR reiterates its position that commercial wireless services are entirely unsuitable for the critical safety functions provided by railroads.

Respectfully submitted,

ASSOCIATION OF AMERICAN RAILROADS

By: 

Thomas J. Keller
Leo R. Fitzsimon
VERNER, LIIPFERT, BERNHARD,
MCPHERSON & HAND, CHARTERED
901 15th Street, N.W.
Suite 700
Washington, D.C. 20005
(202) 371-6060

Its Attorneys

Dated: December 19, 1996

CERTIFICATE OF SERVICE

I, Tina Harris, hereby certify that the foregoing "Reply Comments of the Association of American Railroads" was served by first-class mail, postage prepaid, this 19th day of December, 1996 to the following persons:

Raymond R. Smith
Project Manager, Ohio MARCS
Ohio Department of Administrative Services
Division of Computer Services
30 East Broad Street
Columbus, OH 43266-0409

David J. Hensing
Deputy Executive Director
American Association of State Highway and Transportation Officials
444 N. Capitol St., N.W., Suite 249
Washington, D.C. 20001

Gary David Gray, P.E.
Chief Telecommunications Engineer
County of Orange
Communications Division
840 North Eckhoff Street, Suite 104
Orange, CA 92868-1021

Thomas Jefferson, Inc.
3229 Waterlick Road
Lynchburg, VA 24502
Counsel to Association of Federal Communications Consulting Engineers

Robert Rose, Secretary
Northern California Chapter of the Association of Public/Safety Communications Officials, International, Inc.
7468 Muirwood Court
Pleasanton, CA 94588-4232

David G. Walchak
Chief of Police, Concord, New Hampshire
International Association of Chiefs of Police
515 North Washington Street
Alexandria, VA 22314-2357

Florence Dean
Special Counsel
New York City Transit
130 Livingston Street
Brooklyn, NY 11201

Lawrence D. Hughes
Acting County Executive
County of Prince William, Virginia
1 County Complex Court
Prince William, VA 22192-9201

Travis Williams, Chair
Regulatory Committee
California Public-Safety Radio Association, Inc.
P.O. Box 39100
Downey, CA 90239

Ramsey L. Woodworth
Wilkes, Artis, Hedrick & Lane, Chartered
1666 K Street, N.W., Suite 1100
Washington, D.C. 20006
Counsel for South Bay Regional Public Communications Authority

Martin W. Bercovici
Keller and Heckman LLP
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
Counsel for International Municipal Signal Association, the International Association of Fire Chiefs, Inc. and the State of New Hampshire

John A. Prendergast
Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, N.W., Suite 300
Washington, DC 20037
Counsel for American Automobile Association and the Alarm Industry Communications Committee

John L. Bartlett
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Counsel for Aeronautical Radio, Inc.

William Malone
Miller, Canfield, Paddock and Stone
1225 Nineteenth Street, N.W., Suite 400
Washington, DC 20036-2420
Counsel for Nebraska Public Power District

Cheryl A. Tritt
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W., Suite 5500
Washington, D.C. 20006
Attorney for 2 GHZ MSS Coalition (ICO Global Communications)

Nancy J. Thompson
General Attorney
COMSAT Corporation
6560 Rock Spring Drive
Bethesda, MD 20817
Attorney for 2 GHZ MSS Coalition

Antoinette Cook-Bush
Skadden Arps Slate Meagher & Flom
1440 New York Ave., N.W.
Washington, D.C. 20005
Attorney for 2 GHZ MSS Coalition (CELSAT America, Inc.)

Philip V. Permut
Kelley Drye & Warren, LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
Attorney for 2 GHZ MSS Coalition

Jim Gay, President
NASTD
c/o The Council of State Governments
Iron Works Pike
P.O. Box 11910
Lexington, KY 40578-1910

Lon C. Levin
Vice President and Regulatory Counsel
AMSC Subsidiary Corporation
10802 Parkridge Boulevard
Reston, VA 22091

Wayne V. Black
Keller and Heckman LLP
1001 G Street, N.W.
Suite 500 West
Washington, DC 20001
Counsel for American Petroleum Institute

Robert B. Kelly
Kelly & Povich, P.C.
1101 30th Street, N.W., Suite 300
Washington, D.C. 20007
Counsel for Securicor Radiocom Limited and Intelligent Transportation Society of America

Dennis L. Myers
Vice President and General Counsel
Ameritech Cellular Services
2000 West Ameritech Drive
Location 3H78
Hoffman Estates, IL 60195-5000

Dr. Michael C. Trahos, D.O., NCE, CET Chairman
Region-20 Public Safety Review Committee
Legislative/Regulatory Affairs Committee
4600 King Street, Suite 4E
Alexandria, VA 22302-1213

Craig M. Jorgensen
Co-chair and Project Director
Project 25 Steering Committee
1398 Michigan Avenue
Salt Lake City, UT84114

Richard Barth
Director of Telecommunications Strategy and Regulation
Motorola, Inc.
1350 Eye Street, N.W.
Suite 400
Washington, D.C. 20005

R. Michael Senkowski
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006
Counsel for Motorola, Inc.

Roger R. Bisby
Staff Engineer
Maxon America, Inc.
10828 NW Air World Drive
Kansas City, MO 64153

Colonel Hanford C. Thomas
Deputy Superintendent Administration
New York State Police
Building 22
1220 Washington Avenue
Albany, NY 12226-2252

Pete Wanzenried
Acting Deputy Director
The State of California, Department of General Services, Telecommunications Division
601 Sequoia Pacific Boulevard
Sacramento, CA 95814-0282

S.K. Khanna
Association of Federal Communications Consulting Engineers
P.O. Box 19333
20th Street Station
Washington, D.C. 20036-0333

Dr. Lars-Goran Larsson
Director, Standards and Regulations
Ericsson Inc.
1634 I Street, N.W.
Suite 600
Washington, DC 20006-4083

Jeffrey H. Olson
Paul, Weiss, Rifkind, Wharton & Garrison
1615 L Street, N.W., Suite 1300
Washington, D.C. 20036
Counsel for Nippon Telegraph and Telephone Corporation

Rosalind A. Knapp
Deputy General Counsel
United States Department of Transportation
400 Seventh St., S.W.
Washington, D.C. 20590

Jeffrey L. Sheldon
General Counsel
UTC, The Telecommunications Association
1140 Connecticut Ave., N.W., Suite 1140
Washington, DC 20036

Robert S. Foosaner
Senior Vice President-Government Affairs
Nextel Communications, Inc.
800 Connecticut Avenue, N.W., Suite 1001
Washington, D.C. 20006

Judith F. Furie
Quantum Radionics Corporation
2121 Eisenhower Avenue
Alexandria, VA 22134

Ronald K. Greenhalgh
Chief Engineer
National Rural Electric Cooperative Association
4301 Wilson Boulevard
Arlington, VA 22203-1860

Robert M. Gurss
Wilkes, Artis, Hedrick & Lane, Chartered
1666 K Street, N.W., #1100
Washington, DC 20006
Counsel for Association of Public-Safety Communications Officials International, Inc.
and County of Los Angeles

Samuel F. Gargaro
Office of Electronic Communications, Director
Minnesota Department of Transportation
161 St. Anthony, Suite 900
St. Paul, MN 55103

Donald W. Pfohl
Communications Director
City of Mesa, Arizona Communications Division
161 E. Sixth Place
Mesa, AZ 85201

John S. Powell
P.O. Box 4342
Berkeley, CA 94704-0342

Kenneth R. Yarbrough
Chief of Police
Richardson Police Department
P.O. Box 831078
Richardson, TX 75083-1078

Ramsey L. Woodworth
Wilkes, Artis, Hedrick & Lane, Chartered
1666 K Street, N.W., #1100
Washington, DC 20006
Counsel for South Bay Regional Public Communications Authority

Dan Bart
Vice President Standards and Technology
Telecommunications Industry Association Mobile and Personal Communications
Division
Personal Communications Division
2500 Wilson Blvd., Suite 300
Arlington, VA 22201

Mark E. Crosby
President and Chief Executive Officer
Industrial Telecommunications Association, Inc.
1110 N. Glebe Road, Suite 500
Arlington, VA 22201-5720

James J. Flyzik
Chairperson Government Information Technology Services Board
The Federal Law Enforcement Wireless Users Group
1800 G Street, N.W., Suite 1000
Washington, D.C. 20223

Date: 12-19-96



Tina Harris